

Magistrate Judge Paula L. McCandlis

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff

v.

JASON DESIMAS,  
Defendant

NO. CR20-222RAJ

MOTION AND MEMORANDUM IN  
SUPPORT OF DETENTION

The United States moves for pretrial detention of the Defendant, pursuant to 18 U.S.C. §§3142(e) and (f). Filed contemporaneous with this motion are three exhibits, filed under seal.

1. **Eligibility of Case.** This case is eligible for a detention order because this case involves (check all that apply):

- ☒ Crime of violence (18 U.S.C. 3156).
- ☐ Crime of Terrorism (18 U.S.C. 2332b (g)(5)(B)) with a maximum sentence of ten years or more.
- ☐ Crime with a maximum sentence of life imprisonment or death.
- ☐ Drug offense with a maximum sentence of ten years or more.

☐ Felony offense and defendant has two prior convictions in the four categories above, or two State convictions that would otherwise fall within these four categories if federal jurisdiction had existed.

☐ Felony offense involving a minor victim other than a crime of violence.

☐ Felony offense, other than a crime of violence, involving possession or use of a firearm, destructive device (as those terms are defined in 18 U.S.C. 921), or any other dangerous weapon.

☐ Felony offense other than a crime of violence that involves a failure to register as a Sex Offender (18 U.S.C. 2250).

☒ Serious risk the defendant will flee.

☒ Serious risk of obstruction of justice, including intimidation of a prospective witness or juror.

2. **Reason for Detention.** The Court should detain defendant because there are no conditions of release which will reasonably assure (check one or both):

☒ Defendant's appearance as required.

☒ Safety of any other person and the community.

**Time for Detention Hearing.** The United States requests the Court conduct the detention hearing:

☒ At the initial appearance

☐ After a continuance of 3 days (18 U.S.C. 3142(f)(2))

### **MEMORANDUM IN SUPPORT OF DETENTION**

The United States asserts that the defendant, Jason DeSimas, poses a danger to the community as well as a serious risk of obstruction of justice based on the nature of the charged offenses. DeSimas is also considered a flight risk due to his prior criminal history that include convictions for felony drug offenses, forgery, identity theft, motor vehicle theft, assault third degree, and burglary second degree. His criminal history also

1 includes a pattern of failures to appear and fugitive status, and he committed the indicted  
 2 hate crime offense less than two years after having been convicted of felony drug crimes.  
 3 For these reasons and the proffer of information below, it is the government's position  
 4 that there are no conditions or combination of conditions that will reasonably assure the  
 5 safety of the community and/or defendant's appearance at future court proceedings.

6 The charges in the Indictment arise out of an investigation of a racially-motivated  
 7 assault of a Black man, T.S., on December 8, 2018, at a restaurant and bar in Lynnwood,  
 8 Washington. In video recordings of the incident, DeSimas is depicted actively assaulting  
 9 the victims by striking downward with his arms, over and over. Two of the victims  
 10 identified a man with a 'devils' tattoo taunting and yelling at T.S. using the "N" word  
 11 before, during, and after the assault.<sup>1</sup> DeSimas is also seen on a video recording, while  
 12 walking out of the Rec Room, yelling at and threatening T.S. that he will "beat the brakes  
 13 off" of T.S.

14 On December 5, 2019, a FBI agent contacted DeSimas, who voluntarily agreed to  
 15 an interview. During this interview, DeSimas admitted that he was a member of Crew 38,  
 16 a support club of Hammerskin Nation, a white supremacists organization. DeSimas lied  
 17 to the FBI, denying that neither he nor anyone else had used the "N" word on the evening  
 18 of December 8, 2018. *See* Exhibit A, Report of Interview of Jason DeSimas.

19 **A. DeSimas does not Qualify for Release**

20 Jason DeSimas has been charged with a crime of violence, specifically, Hate  
 21 Crime, a violation of Title 18, United States Code, Section 249(a)(1), and must be  
 22 ordered detained pending trial if "the judicial officer finds that no condition or  
 23 combination of conditions will reasonably assure the appearance of the person as required  
 24 and the safety of any other person and the community." 18 U.S.C. §3142(e)(1). Danger  
 25 to the community must be demonstrated by clear and convincing evidence, *see United*  
 26 \_\_\_\_\_

27 <sup>1</sup> Law enforcement reports and booking photos of DeSimas for prior offenses note that he has a tattoo of a devil's  
 28 face on the front of his neck.

1 *States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir. 1991), while risk of flight may be  
 2 established by a preponderance of the evidence. *See United States v. Diaz-Hernandez*,  
 3 943 F.3d 1196, 1198 (9th Cir. 2019).

4 **B. The 3142(g) Factors Weigh in Favor of Detention.**

5 In determining whether to release or detain a defendant pending trial, the Court  
 6 considers the following factors: (1) the “nature and circumstances of the offense  
 7 charged,” (2) the “weight of the evidence against” the defendant, (3) the “history and  
 8 characteristics” of the defendant, including his “character, physical and mental condition,  
 9 family ties, employment, financial resources, length of residence in the community,  
 10 community ties, past conduct, history relating to drug or alcohol abuse, criminal history,  
 11 and record concerning appearance at court proceedings,” and (4) “the nature and  
 12 seriousness of the danger to any person or the community that would be posed by the  
 13 person’s release.” 18 U.S.C. § 3142(g). “Of these factors, the weight of the evidence is  
 14 the least important, and the statute neither requires nor permits pretrial determination of  
 15 guilt.” *Gebro*, 948 F.2d at 1121.

16 1. *Danger to the Community*

17 DeSimas assaulted and attacked T.S., a Black man, without provocation and not in  
 18 defense of any other person, on the evening of December 8, 2018. Two other individuals,  
 19 J.B. and A.D., attempted to intervene to protect T.S. from DeSimas and the other three  
 20 co-defendants while they were beating T.S. Undeterred, DeSimas and his co-defendants  
 21 also assaulted J.B. and A.D., both of whom suffered injuries. Based on video evidence,  
 22 statements of the victims, and several statements of witnesses who were not associated  
 23 with DeSimas, his co-defendants, and their group, DeSimas and his co-defendants were  
 24 punching and striking T.S. and the other victims. During the assault, T.S. was repeatedly  
 25 called the “N” word by DeSimas and others.

26 When DeSimas agreed to be interviewed by the FBI on December 5, 2019, he  
 27 gave false statements about his actions and those of others that were intended to deceive  
 28 the investigators. In particular, DeSimas alleged that the attack was not racially-

1 motivated and denied the use of derogatory and racially-motivated statements made  
 2 during the assault of T.S. However, the investigation has shown that, on the night of the  
 3 assault, DeSimas had gathered with his co-defendants and others as part of a weekend  
 4 memorial service honoring a white supremacist, Robert J. Matthews, who died during a  
 5 shootout with the FBI on Whidbey Island in 1984, an annual weekend event often  
 6 referred to as “Martyr’s Day.” Facebook records for DeSimas’ Facebook accounts  
 7 evidence DeSimas’s participation in “Martyr’s Day” activities in December 2018, as well  
 8 as his belief in the inferiority of the Black race; and his active membership in Crew 38  
 9 and his support of Hammerskin Nation.<sup>2</sup> See, Exhibit B, examples of Facebook postings  
 10 on DeSimas’ Facebook accounts.

11 The government has also filed, under seal as Exhibit C, a statement by T.S. This  
 12 statement describes the long-lasting and significant impact that the hate crime has had on  
 13 him, that he does not know where the defendants are located, and that they could be  
 14 anyone, and as a result, he is “hypervigilant” and “fearful” of his safety at all times.  
 15 Entering an order of detention will ensure the safety of T.S. and the other victims and  
 16 witnesses.<sup>3</sup>

## 17 2. Risk of Flight

18 DeSimas has self-surrendered, but this does not mitigate his risk of flight and non-  
 19 appearance. Efforts to locate DeSimas by law enforcement have been extensive.

20 Over the past several weeks, law enforcement has made numerous attempts,  
 21 unsuccessfully, to locate DeSimas. They have conducted dozens of instances of  
 22 surveillance and spot checks on possible addresses where DeSimas may be located, as  
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24  
 25 <sup>2</sup> The Anti-Defamation League describes the Hammerskins as a national and international white supremacist  
 26 organized known for violence notably against Black persons.  
<https://www.adl.org/education/resources/profiles/hammerskin-nation>

27 <sup>3</sup> The three other co-defendants are in custody. Daniel Delbert Dorson has been ordered detained and will be  
 28 transferred to this District. Randy Smith is detained in the District of Oregon, on an unrelated federal case. Jason  
 Stanley is detained at the Idaho Department of Corrections, on an unrelated case.

1 well as DeSimas' business, the Tac Town Tattoo Shop located at 8232 Pacific Avenue in  
2 Tacoma. Despite these numerous surveillance efforts, law enforcement has not seen  
3 DeSimas. They have conducted surveillance at various times of the day and night, as well  
4 as on different days of the week. Prior to these surveillance efforts, law enforcement  
5 learned that DeSimas drove a 1995 red Jeep Cherokee. This Jeep was located in early  
6 December 2020 at an apartment in the building of 4026 South Puget Sound Avenue in  
7 Tacoma. Law enforcement conducting surveillance observed that the Jeep was being used  
8 by an known associate of DeSimas, and not being used by DeSimas.

9 Law enforcement also tried to locate DeSimas at various addresses in Tacoma and  
10 Puyallup, as well as at the residence of DeSimas's sister. He has not been seen at any of  
11 those addresses. Furthermore, a review of social media accounts for DeSimas appears to  
12 show that he is noting that he is at different physical locations, but again, law  
13 enforcement has not been able to observe him at any of those locations. They have also  
14 located five to ten different phones numbers that may in use by DeSimas.

15 On December 18, 2020, law enforcement contacted multiple individuals at  
16 multiple addresses. They claimed not to know DeSimas' phone number or current  
17 residence, and suggested that he may be in Puyallup, Graham, or Spanaway. DeSimas's  
18 address with the Department of Licensing does not appear to be current. Certainly, since  
19 DeSimas contacted the Federal Public Defender's Office, it appears likely that at least  
20 one of the individuals whom law enforcement contacted did, in fact, communicate with  
21 DeSimas to advise him of the outstanding warrant. This leads the government to believe  
22 that associates of DeSimas will not be cooperative with any future attempts at locating  
23 him if he were to flee or conceal himself.

### 24 **C. Pre-Trial Detention at FDC SeaTac**

25 The government anticipates that the defense will argue that pre-trial detention at  
26 FDC Sea-Tac due to the number of Covid-19 positive cases and DeSimas' health  
27 conditions. The government is unaware of any health conditions DeSimas has that would  
28 place him at high risk of contracting Covid-19.

MOTION FOR DETENTION/

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UNITED STATES ATTORNEY  
700 Stewart Street Suite 5220  
Seattle, Washington 98101  
(206) 553-7970

1 As for the current situation at FDC Sea-Tac, the Bureau of Prisons and FDC  
 2 SeaTac have, by all objective accounts, responded to this pandemic in a reasonable  
 3 manner, and have taken steps to prevent infectious outbreak and protect the health of its  
 4 inmates. Fortunately, none of the inmates or staff who have contracted Covid-19 have  
 5 been hospitalized nor died.

6 FDC Sea-Tac has advised that for new arrestees, they will be placed in quarantine  
 7 and tested. Unless the new arrestee tests positive, they will have legal calls available.  
 8 All individuals with COVID have been isolated and any inmate who was in the same  
 9 housing unit has also been tested and is being quarantined as a precaution. FDC Sea-Tac  
 10 is continuing to do its best to follow the CDC recommendations for Corrections and  
 11 Detention facilities. [https://www.cdc.gov/coronavirus/2019-ncov/community/correction-](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html)  
 12 [detention/guidance-correctional-detention.html](https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html). Only inmates who have tested positive  
 13 and in isolation are restricted from placing legal calls, and even that restriction is in place  
 14 until January 4, 2021, to prevent exposure risk to staff. Isolated inmates with Covid-19  
 15 are still able to get legal mail and to send any ail out of the institution. All inmates also  
 16 have access to medical care at any time, regardless of whether they have Covid-19.

17 The FDC's pandemic restrictions are designed to protect DeSimas's health and  
 18 well-being, and such measures will not violate his right to due process. In *United States*  
 19 *v. Casey*, CR20-0020-RAJ, the Court rejected defendant's due process claim due to the  
 20 legitimate governmental objective of protecting individuals from COVID-19, explaining  
 21 as follows:

22 The Court considers protecting individuals from COVID-19 to be a legitimate  
 23 government objective. All of the conditions cited by Defendant as punitive are, in  
 24 fact, the prison officials' efforts to protect detainees from a COVID-19 outbreak,  
 25 or a result thereof: (1) the lockdown of Defendant's housing unit; (2) the  
 26 prohibition of face-to-face meetings with counsel; (3) the ban on family visits; (4)  
 27 the inability to access substance abuse treatment, which allegedly deprives him of  
 28 medical care. *Id.* at 6. The safety precautions implemented as a result of COVID-  
 19, both within and outside of FDC SeaTac, are challenging, but they serve a  
 legitimate government objective and thus do not amount to punishment.

1 *United States v. Casey*, CR20-0020-RAJ, at Dkt. 63.

2       Importantly, nothing about the COVID-19 pandemic mitigates the danger that  
3 DeSimas poses to others or his risk of nonappearance. See 18 U.S.C. § 3142(e)(1).

4       The Bail Reform Act, however, prohibits categorical grants or denials of bail that  
5 are untethered from an individualized determination of the factors set forth in § 3142(g).  
6 See *United States v. Diaz-Hernandez*, 943 F.3d 1196, 1199 (9th Cir. 2019). To be sure,  
7 the Bail Reform Act instructs the Court to consider a defendant’s own “physical and  
8 mental health” in determining “whether there are conditions of release that will  
9 reasonably assure the appearance of the person as required and the safety of any other  
10 person and the community.” 18 U.S.C. §3142(g)(3)(A). For example, if a defendant  
11 suffers from a serious medical condition that is either incapacitating or requires constant  
12 medical care, it may be reasonable to infer that this condition makes the defendant less  
13 likely to flee or less of a risk to the community (depending, of course on his past criminal

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UNITED STATES ATTORNEY  
700 Stewart Street Suite 5220  
Seattle, Washington 98101  
(206) 553-7970



1 history and the nature of his current offense). But the general existence of a pandemic  
2 does not have significant bearing on whether a non-symptomatic defendant's actual  
3 "physical and mental health" weighs in favor of release.

4 DATED this 21<sup>st</sup> day of December, 2020.

5 Respectfully submitted,

6 BRIAN T. MORAN  
7 United States Attorney

8  
9 s/Ye-Ting Woo

10 YE-TING WOO  
11 Assistant United States Attorney

12 s/Christine M. Siscaretti

13 CHRISTINE M. SISCARETTI  
14 Trial Attorney  
15 Criminal Section, Civil Rights Division

16 700 Stewart Street, Suite 5220  
17 Seattle, Washington 98101  
18 (206) 553-7970

19 [Ye-Ting.Woo@usdoj.gov](mailto:Ye-Ting.Woo@usdoj.gov)  
20 [Christine.Siscaretti@usdoj.gov](mailto:Christine.Siscaretti@usdoj.gov)  
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